IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 984 of 1996

in

SPECIAL CIVIL APPLICATIONNo 2294 of 1995

with

CIVIL APPLICATION No 7486 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATWARLAL AMRUTLAL SHAH

Versus

EMPLOYEES STATE INSURANCE SCHEME

Appearance:

MR TR MISHRA for Appellant

MR KG SHETH, AGP, for Respondent

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 22/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

A short, but interesting question, which has figured in this Letters Patent Appeal under clause 15 of the Letters Patent is, as to whether the impugned order of the learned single Judge, whereby, the claim for an amount of Rs.2,06,068/- made by the respondent-workman, who was working with E.S.I. Scheme, Ahmedabad, towards overtime wages due and payable, setting aside the order passed by the Labour Court, is justified or not, to which our answer, upon assessment and evaluation of the facts and circumstances and the principles of law is, in the negative, in favour of the workman, for the following reasons.

At this stage, admitted aspects may be narrated so as to comprehend, fully, the merits of this Letters Patent Appeal.

The appellant was appointed as Watchman with respondent E.S.I. Scheme, Ahmedabad (hereinafter known as 'the Corporation'). He made an application for the recovery of dues of overtime, etc. before the Labour Court. The recovery application No.2082 of 1990 was granted on 16.5.94 against the respondent. Thus, the amount of Rs.2,06,068/- towards overtime was granted and, accordingly, direction was issued to the respondent Corporation for payment, which came to be questioned by the respondent by filing Special Civil Application No.2294 of 1995, which came to be allowed by the learned single Judge. Hence this Letters Patent Appeal under clause 15 of the Letters Patent.

There is no dispute about the fact that the appellant was working as a watchman and he was working from 8.00 p.m. to 8.00 a.m. The respondent in its reply, as at Ex.4, before the Labour Court, has in clear terms stated that the appellant-original applicant workman was engaged as a watchman, who had to work from 8.00 p.m. to 8.00 a.m. Thus, it is an admitted fact that the appellant was working 12 hours in a day. There is, also, no dispute about the fact that the workman has to work for a period of 8 hours and any work taken by the master beyond the period of 8 hours is subject to overtime payment as per the Rules prevalent, at the relevant time.

The Labour Court, considering the facts and circumstances, found the case of the appellant justified and, therefore, granted the application under section 33C(2) of the Industrial Disputes Act and awarded the amount towards the overtime claim made by the appellant to the extent of Rs.2,06,068/- against the original claim of Rs.2,22,009.85 ps.

The respondent being aggrieved by the order of the Labour Court, questioned the same before the learned single Judge, successfully, and hence, at the instance of the original applicant, this Letters Patent Appeal, before us.

The appellant, original-applicant, had invoked the powers under section 33C(2) of the Industrial Disputes Act, 1947, which reads as under:

> "33-C(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government within a period not exceeding three months,
>
> Provided that where the president officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

Making an application under section 33C(2) of the ID Act, the appellant claimed the aforesaid amount towards the overtime dues which were not disputed by the other side. It appears that the learned single Judge has rejected the claim and has set aside the order of the Labour Court, mainly, on the ground of making such a claim before the Labour Court late. In other words, the delay is held to be fatal in claiming the overtime amount. In our opinion, the approach of the learned single Judge, with due respect, is not in consonance with or compatible to the relevant proposition of law on this score. In our opinion, the very aim, design and desideratum of the provisions of section 33C(2) of the ID Act, while viewed in the light of the benevolent legislation, and that too, in absence of any specific provision with regard to

prescription of time for the recovery of amount with the help of section 33C(2), cannot be construed to limit and circumscribe the right of the workman for the recovery of the legitimate dues payable by the master or the management concerned. In our opinion, therefore, rejection of the claim in the impugned judgment of the learned single Judge on the ground of delay is not justified. We may make it clear that failure of the Legislature to make any provision for limitation cannot be deemed to be an accidental omission. In the facts and circumstances and keeping in mind the benign provisions, of a weaker sections of the society, it would be legitimate to infer that the Parliament in its wisdom has deliberately did not provide for any limitation under section 33-C(2). Even from the different perception, a workman or a person who is the beneficiary under section 33-C(2) of the ID Act, hails from a lower strata of the society and he would not be conscious of the period of limitation for the recovery of legitimate dues. In all probabilities, this may be one of the reasons, Parliament has not prescribed the period of limitation for the recovery of said dues while incorporating provisions in section 33-C(2) of the ID Act.

The view, which we are inclined to take, at this juncture, is very much reinforced by host of decisions and pronouncements of the Apex Court. However, we cannot resist the temptation of mentioning two decisions, at this juncture:

(1) Decision rendered in Bombay Gas Company Ltd v. Gopal Bhiva, AIR 1964 SC 752.

(2) Decision rendered by the Apex Court in Punjab Co-operative Bank Ltd. vs. R.S.Bhatia, 1975(2) LLJ 373.

We have, therefore, no hesitation in finding that the appellant, original applicant workman, is entitled to the amount due and payable towards arrears of overtime by the respondent Corporation, and therefore, while reversing the order of the learned single Judge, the order of the Labour Court is required to be restored.

Accordingly, this appeal is allowed. The impugned judgment of the learned single Judge is quashed and set aside and the order of the Labour Court is restored. The respondent Corporation is directed to pay the amount due and payable to the appellant, as expeditiously as possible, but not later than 30th April, 2001, failing which, the Corporation shall liable to pay interest at

the rate of 12 per cent per annum from 1st May, 2001, till the date of payment, with cost which is quantified at Rs.2,000/-.

In view of the order passed in the main Letters Patent Appeal, the Civil Application does not assume any survival value. Hence it shall stand disposed of accordingly. Rule discharged.

(J.N.Bhatt, J.)

(A.M.Kapadia, J.)
(vjn)